

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The VPTA contracts with nine local non-profit organizations to broker transportation services for individuals within certain geographical "hospital catchment" areas. Among the duties of these subcontractors is to arrange necessary Medicaid transportation and to follow the state and federal rules, the provisions of M755 of the Medicaid Manual and the "transportation Procedural Manual" used by DCF.

3. The petitioner has been served for a number of years by the designated broker for his catchment area. Over the years, the relationship between the petitioner and the broker has deteriorated.

4. The petitioner for some time was delivered to his medical appointments via a van run by the designated broker. (The record shows over five hundred trips arranged through this method.) Disputes arose between the petitioner and the broker's transportation co-ordinator regarding unauthorized stops for shopping during trips, return trips for pharmacy items, and waiting times at appointments.

5. Ultimately, the designated broker obtained a "no trespass" order against the petitioner from the Court on October 19, 2004, after reporting that the petitioner had told the transportation co-ordinator that "if he had a gun"¹ three people at the brokerage, including the director and the co-ordinator, would be dead. In a letter dated October 22, 2004, the brokerage director notified the petitioner that it would continue to arrange trips for the petitioner with "volunteer

¹ The petitioner asserts that he actually said that "if he were not a Christian and had a gun" the three employees would be dead. The petitioner feels that the court was wrong to issue the no trespass order. It is not the province of the Board, however, to question the court's ruling in this matter.

drivers" over the telephone but the petitioner was not allowed to come to the broker's offices or use their vans.

6. Following this letter, the petitioner asked DCF to change him to another broker in either of two nearby catchment areas to the west. He argued that due to his home's location in the extreme western portion of his designated broker's catchment area, the offices of these two other brokers were only two to four miles farther from his home than that of his designated broker. He argues that sending a van to pick him up would cost these two brokers about the same as his designated broker.

7. In response to this request, DCF supplied the petitioner with a memo it had received from its contractor VPTA. That memo reads, in pertinent part, as follows:

VPTA has established a process to rationalize distribution of trips among the state's nine (9) transportation brokers as well as to provide the most appropriate service for clients at the least cost to Medicaid

Each of the transportation brokers is assigned to a region of the state that encompasses a medical service catchment area. The regions are designed to maximize available volunteer driver and vehicle resources and to minimize the travel distances between clients and service providers that are at the locus of an area.

Assignment of clients to alternative service providers is not permitted. Each broker is provided budgets, resources and staff based on the assigned catchment area. VPTA has no mechanism to provide additional compensation

to transportation [brokers] to provide services to individuals outside of their assigned catchment areas.

8. In December of 2004, each of the western catchment brokers to which the petitioner sought reassignment notified DCF that it would not take on the petitioner as a client. Each cited contractual agreements, understaffing and fiscal difficulties which would prevent it from serving persons outside of its catchment area.

9. Since the "no trespass" order, the petitioner has used "volunteer drivers" to get to medical appointments. Initially these drivers were arranged by the designated broker. In November of 2004, the petitioner got into a dispute with a "volunteer driver". A few months later the designated broker learned that the petitioner said that he intended to obtain a gun and carry it in order to protect himself from perceived threats by the "volunteer drivers". The petitioner does not deny this statement and says that he was informed by the local police that it was legal to carry a gun in the vehicles as long as he advised the drivers of its existence and had the gun properly holstered.

10. In response to his statement, the designated broker notified the petitioner that it would no longer use its "volunteer drivers" to transport him because it had a policy

of prohibiting weapons in vehicles used for transportation to medical appointments. The designated broker advised the petitioner that he would have to obtain his own "personal drivers" for transportation and that the broker would then arrange for payment for those drivers.

11. According to a letter written by the petitioner's physician in March of 2005, the arrangement whereby the petitioner finds his drivers and the designated broker pays for them was working well. However, the petitioner found that arranging the trips was adding to his phone bill and he asked recently that the designated broker arrange the trips as well as pay for them while this matter is pending. He still wants to switch to a different broker.

12. The designated broker's director said that the broker could arrange the trips only if the petitioner was willing to put his chosen drivers through their screening process. For liability purposes, the broker is not willing to arrange transportation services with drivers it has not screened and approved. The designated broker is committed to continuing to serve the petitioner by processing Medicaid payments for transportation to his necessary medical appointments.

ORDER

The decision of DCF is affirmed.

REASONS

The federal regulations governing the Medicaid program require that a State plan must:

- (a) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and
- (b) Describe the methods that the agency will use to meet this requirement.

42 C.F.R. § 431.53

The regulations further define "transportation" as follows:

- (a) Transportation.
 - (1) "Transportation" includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient.
 - (2) Transportation, as defined in this section, is furnished only by a provider to whom a direct vendor payment can appropriately be made by the agency. If other arrangements are made to assure transportation under Section 431.53 of this subchapter, FFP² is available as an administrative cost.
 - (3) "Travel expenses include—
 - (i) The cost of transportation for the recipient by ambulance, taxicab, common carrier, or other appropriate means;

² Federal financial participation.

- (ii) The cost of meals and lodging en route to and from appointments;
- (iii) The cost of an attendant to accompany the recipient, if necessary, and the cost of the attendant's transportation, meals, lodging, and, if the attendant is not a member of the recipient's family, salary.

42 C.F.R. § 440.170

Pursuant to the state plan requirements set forth above, the legislature has directed DCF (through the Agency of Human Services) "to purchase client transportation through public transit systems in all instances where public transit services are appropriate to client needs and as cost-efficient as other transportation." 24 V.S.A. § 5090. To carry out this directive, DCF has contracted with VPTA which in turn contracts with non-profit brokerages in nine catchment areas. Each brokerage is required to serve the persons in its catchment area through observance of the federal regulations listed above and the state regulation governing Medicaid transportation payments: ("Provider Agreement", Section 5(c)). DCF's promulgated regulations on transportation read as follows:

Transportation to and from necessary medical services is covered and available to eligible Medicaid recipients on a statewide basis.

The following limitations on coverage shall apply:

1. Prior authorization is required. (Exceptions may be granted in a case of a medical emergency.)
2. Transportation is not otherwise available to the Medicaid recipient.
3. Transportation is to and from necessary medical services.
4. The medical service is generally available to and used by other members of the community or locality in which the recipient is located. A recipient's freedom of access to health care does not require Medicaid to cover transportation at unusual or exceptional cost in order to meet a recipient's personal choice of provider.
5. Payment is made for the least expensive means of transportation and suitable to the medical needs of the recipient.
6. Reimbursement for the service is limited to enrolled transportation providers.
7. Reimbursement is subject to utilization control and review in accordance with the requirements of Title XIX.
8. Any Medicaid-eligible recipient who believes that his or her request for transportation has been improperly denied may request a fair hearing. For an explanation, see the "Fair Hearing Rules" listing in the Table of Contents.

DCF also uses a manual entitled "Medicaid Transportation Procedures" (Revised, December 2000) to interpret and add guidance details to the above regulation. That manual states that "payment is made for the least expensive means of

transportation suitable to the medical needs of the client", which, in keeping with the legislature's directive, gives preference to any local bus service. (§ 3.3.4.4). The manual requires brokers to establish that they have used the least expensive suitable means of transportation in order to obtain payment. (§§ 2.3(e) and 3.3.4(d)) It also states that brokers "are responsible for arranging transportation for clients who do not have transportation of their own and know of no one else who can provide it." (§ 4.1) (Emphasis supplied.)

The petitioner believes that he has a right under Medicaid law to choose his transportation provider as long as that provider is within "comparable mileage" from his home as from the designated broker. He says that he should have a right to choose from any of three brokers which are roughly equidistant from his home. He wants to be able to ride the vans again and to avoid the co-ordinator at the designated broker with whom, he says, he has a personal conflict. The petitioner argues that federal law supports his position.

The petitioner's claim is not supported by the law set forth above and he was not able to point to any other that does. The federal regulations do not set out any freedom of choice provisions in the transportation program for Medicaid

beneficiaries.³ The only right it gives to beneficiaries is the right to be provided with transportation, and related expenses, to their necessary medical appointments.

The state statute and the adopted regulations repeatedly place cost constraints on DCF with regard to providing the transportation services. DCF has chosen to contain costs by contracting with VPTA who in turn has individual contracts with local agencies to cover the transportation needs of persons in their defined geographical areas. DCF and VPTA have made it clear that brokers are only given money and budgets for the persons in their contracted catchment areas. There is an economy in this arrangement which would be thwarted if individuals tried to use brokers outside of the contracted geographical areas. It is also clear that the other two "equidistant" brokers which the petitioner wishes to use do not receive payments for and do not have the resources to serve persons outside of their contracted geographical areas. Undoubtedly, if those brokers were to agree to serve the petitioner, they would have to charge an amount above that provided in their contracts. By requiring the petitioner to stay with his current broker, DCF is acting within its

³ Medicaid beneficiaries do have the freedom to choose their medical providers within reasonable limits under the program. See M103.

legislative mandate to provide services by the least expensive means for Medicaid transportation.

The Board cannot impose an obligation on DCF to obtain a different broker for the petitioner when DCF's procedures are designed to carry out the applicable law requiring minimizing expenses. See 3 V.S.A. § 3091(d), Fair Hearing Rule 17. That being said, it is important to point out that the petitioner's current broker does have an obligation under the regulations and guidelines set forth above to "arrange" transportation for the petitioner as well as to pay for it. The broker has agreed to undertake this obligation by arranging transportation with the "personal providers" selected by the petitioner provided they meet screening requirements for contracted drivers. If the broker will not make arrangements for the petitioner's transportation, the petitioner can file for a fair hearing.

The petitioner should understand quite clearly, however, that the broker has the right to impose reasonable policies ensuring the safety of persons, both drivers and Medicaid recipients, in the transportation program it administers. It is certainly reasonable for the broker to prohibit persons from carrying weapons on the transportation trips it arranges and to refuse to arrange transportation for those who would

violate that policy because of the extremely dangerous nature of such an activity. The petitioner's failure to abide by reasonable rules could jeopardize his Medicaid coverage. The petitioner does have a right to have his concerns for his safety addressed but by some less dangerous means, such as having a trusted friend ride along to appointments. The petitioner is urged to work with the broker to formulate a transportation accommodation that addresses both of their concerns.

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